



EXPRESS MAIL CERTIFICATE OF MAILING

In re Application of: Wayne Clement Sigl

Entitled: Labial Pad

USSN: 10/037,377

Filed: December 31, 2001

Attorney Docket No.: KCX-803-CIP2

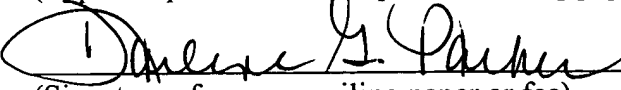
"Express Mail" – Mailing Label Number: EV376134513US

Date of Deposit: September 20, 2004

I hereby certify that this paper and all attachments and any fee are being deposited with the U.S. Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the:

Commissioner for Patents
Mail Stop APPEAL BRIEF
U.S. Patent and Trademark Office
Post Office Box 1450
Alexandria, VA 22313-1450

Darlene G. Parker
(Typed or printed name of person mailing paper or fee)


(Signature of person mailing paper or fee)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Re: Appeal to the Board of Patent Appeals and Interferences

DM-10/2003

In Reply, Attention of: Wayne Clement Sigl

Group Art Unit: 3761

Serial No.: 10/037,377

Examiner: Karin M. Reichle

Filed: December 31, 2001

Our Customer ID: 22827

For: Labial Pad

Our Account No.: 04-1403

Sir:

Attorney Ref.: KCX-803-CIP2 (12657.3)

1. ☐ **NOTICE OF APPEAL:** Pursuant to 37 CFR 1.191, Applicant hereby appeals to the Board of Appeals from the decision dated ____ of the Examiner twice/finally rejecting claims ____.
2. ☒ **BRIEF** on appeal in this application pursuant to 37 CFR 1.192 is transmitted herewith in triplicate.
3. ☐ An **ORAL HEARING** is respectfully requested under 37 CFR 1.194 (due within one month after Examiner's Answer).
4. ☐ Reply Brief under 37 CFR 1.193(b) is transmitted herewith in triplicate.
5. ☐ "Small entity" verified statement filed: ☐ herewith ☐ previously.

6. **FEE CALCULATION:**

If box 1 above is X'd enter \$330.00
If box 2 above is X'd enter \$330.00
If box 3 above is X'd enter \$290.00
If box 4 above is X'd enter -0- (no fee)

	Fees
	\$ 330.00
	\$ _____
	\$ _____
	\$ _____

Petition is hereby made to extend the original due date of _____ to cover the date of this paper and any enclosure for which the requisite fee is (1 month \$110); (2 months \$420); (3 months \$950); (4 months \$1,480).

Less any previous extension fee paid since above original due date.

If "small entity" box 5 above is X'd, enter one-half (1/2 of subtotal and subtract)

Subtotal	\$ _____
	\$ _____
Subtotal	- \$ _____
	\$ _____
TOTAL FEE	- \$ _____
	\$ 330.00

- ☒ Fee enclosed.
- ☐ Charge fee to our Deposit Account/Order Nos. in the heading hereof (for which purpose one additional copy of this sheet is attached)
- ☐ Fee NOT required since paid in prior appeal in which the Board of Appeals did not render a decision on the merits.

The Commissioner is hereby authorized to charge any fee specifically authorized hereafter, or any fees in addition to the fee(s) filed, or asserted to be filed, or which should have been filed herewith or concerning any paper filed hereafter, and which may be required under Rules 16-18 (deficiency only) now or hereafter relative to this application and the resulting official document under Rule 20, or credit any overpayment, to our Account No. show in the heading hereof for which purpose a duplicate copy of this sheet is attached. This statement does not authorize charge of the issue fee in this case.

ADDRESS:

Post Office Box 1449
Greenville, SC 29602 USA
Customer ID No.: 22827
Telephone: 864-271-1592
Facsimile: 864-233-7342

DORITY & MANNING, ATTORNEYS AT LAW, P.A.

By: Steven R. LeBlanc Reg. No.: 47,740
Signature: Steven R. LeBlanc
Date: September 20, 2004



PTO/SB/17 (10-03)
Approved for use through 07/31/2006. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

FEE TRANSMITTAL for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 330

Complete if Known

Application Number	10/037,377
Filing Date	December 31, 2001
First Named Inventor	Wayne Clement Sigl
Examiner Name	Karin M. Reichle
Art Unit	3761
Attorney Docket No.	KGX-803-CIP2

METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None

☐ Deposit Account:

Deposit Account Number
Deposit Account Name

04-1403

DORITY & MANNING, P.A.

The Director is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☒ Credit any overpayments

☐ Charge any additional fee(s) or any underpayment of fee(s)

☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
SUBTOTAL (1)					(\$) 0

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

		Extra Claims		Fee from below		Fee Paid
Total Claims	<input type="text"/>	-20** =	<input type="text"/>	X	<input type="text"/>	= 0
Independent Claims	<input type="text"/>	-3** =	<input type="text"/>	X	<input type="text"/>	= 0
Multiple Dependent	<input type="text"/>				<input type="text"/>	=

Large Entity		Small Entity		Fee Description
Fee Code	Fee (\$)	Fee Code	Fee (\$)	
1202	18	2202	9	Claims in excess of 20
1201	86	2201	43	Independent claims in excess of 3
1203	290	2203	145	Multiple dependent claim, if not paid
1204	86	2204	43	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$) 0.00

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	330.00
1402	330	2402	165	Filing a brief in support of an appeal	
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) 330.00

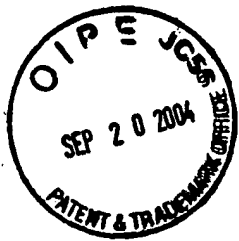
SUBMITTED BY

Name (Print/Type)	Steven R. LeBlanc Esq.	Registration No. (Attorney/Agent)	47,740	Telephone	864/271-1592
Signature	Steve R. LeBlanc	Date	September 20, 2004		

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



9-21-04

AF/3761 ZFW
db

ATTORNEY DOCKET NO.: KCX-803-CIP2
(12657.3)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
Wayne Clement Sigl)	Group Art Unit: 3761
)	
Serial No.: 10/037,377)	Examiner: Karin M. Reichle
)	
Filed: December 31, 2001)	Confirmation #: 6501
)	
Title: Labial Pad)	

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Applicant respectfully submits the enclosed Appeal Brief in triplicate pursuant to 37 C.F.R. 1.192(d) and requests that the Examiner's final rejection of Claims 1, 5, 8-11, 13-15, 19, and 22-25 be reversed and that the application be remanded to the Examiner for allowance.

09/22/2004 HVUONG1 00000152 10037377

01 FC:1402

330.00 0p

I. REAL PARTY IN INTEREST

The assignee Kimberly-Clark Worldwide, Inc. is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

The Applicant, Applicant's legal representative, and assignee have no knowledge of other appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1, 4, 5, 8-15, 18, 19, and 22-26 are pending, with Claims 4, 12, 18, and 26 previously withdrawn. Claims 2, 3, 6, 7, 16, 17, 20, 21, and 27-40 were previously canceled. The Applicant appeals the rejections of Claims 1, 5, 8-11, 13-15, 19, and 22-25 and the asserted effective filing date of these claims.

In a Final Office Action mailed April 22, 2004, Claims 1 and 13-15 were rejected under 35 U.S.C. Section 112, second paragraph, as being indefinite. Claims 1, 5, 11, 13, 15, 19, and 25 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Molnlycke PCT '008 in view of Lassen '062. Claims 8-10 and 22-24 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Molnlycke PCT '008 in view of Lassen '062, Lenaghan '326, and Srinivasan '567. Claim 14 was rejected under 35 U.S.C. Section 103(a) as being unpatentable over Molnlycke PCT '008 in view of Lassen '062, Houghton '950, and Richardson '466.

IV. STATUS OF AMENDMENTS

The Applicant filed an Amendment After Final on June 22, 2004, which included a substitute Abstract, a proposed amendment to the specification, and proposed

amendments to Claims 1, 5, 8, 11, 15, 19, 22, and 25. In an Advisory Action mailed July 21, 2004, the Examiner indicated that the proposed amendments would not be entered because they raised new issues that would require further consideration and/or search and because they were not deemed to place the application in better form for appeal. Accordingly, Claims 1, 5, 8-11, 13-15, 19, and 22-25 (attached hereto as Appendix A and last amended on February 4, 2004) are the subject of this appeal.

V. SUMMARY OF INVENTION

The present invention describes and claims an absorbent article, such as a labial pad, configured for disposition primarily within the vestibule of a female wearer. The claims were previously subject to restriction/election, and the Applicant restricted the invention to Group I, recited by Claims 1-37, and elected the species shown in Figures 3-8, recited by Claims 1-26.

Referring to independent Claims 1 and 15, the absorbent article (40 in Figures 3, 5, 6) generally includes a liquid permeable cover (62 in Figure 4), a liquid impermeable baffle (64 in Figure 4), an absorbent (66 in Figure 4) disposed between the cover and the baffle, and a retainer flap (67 in Figures 3-8) extending over a portion of the baffle. (Application, p. 10, lines 11-20).

The liquid permeable cover (62) is optional and provides a comfortable surface on the body-faceable surface of the absorbent article to direct exudates away from the body, through the cover, and toward the absorbent. (Application, p. 15, line 10 through p. 16, line 28). The liquid impermeable baffle (64) resides on the surface of the absorbent article opposed to the body-faceable surface and permits passage of air and moisture vapor out of the absorbent while blocking passage of fluids. (Application, p.

14, line 29 through p. 15, line 9). The absorbent (66) provides sufficient capacity to absorb and retain the exudates and includes a first outer perimeter (95 in Figures 3, 4). (Application, p. 12, line 7 through p. 14, line 28; p. 19, lines 30-33).

The retainer flap (67) extends over the baffle (64) and covers greater than about 40% of the surface opposed to the body-faceable surface such that the baffle is between the retainer flap and the absorbent, as shown in Figures 4-6. (Application, p. 22, line 26 through p. 23, line 2). The retainer flap (67) includes an outer perimeter having a first portion (90 in Figures 3-8) proximate to and generally attached at or adjacent to the first outer perimeter (95) of the absorbent (66). (Application, p. 19, lines 19-35). The retainer flap (67) also includes a second portion (94 in Figures 3-8) extending across an outer surface of the baffle (64) and covering a portion of the baffle, as shown in Figures 4-6. (Application, p. 20, lines 1-6). The second portion (94) of the retainer flap is displaceable from the baffle to define a first cavity (96 in Figure 6) between the retainer flap and the baffle. (Application, p. 21, lines 13-26).

VI. ISSUES

- A. Are Claims 1 and 13-15 definite under 35 U.S.C. Section 112, second paragraph?
- B. Are Claims 1, 5, 11, 13, 15, 19, and 25 patentable under 35 U.S.C. Section 103(a) over Molnlycke PCT '008 in view of Lassen '062?
- C. Are Claims 8-10 and 22-24 patentable under 35 U.S.C. Section 103(a) over Molnlycke PCT '008 in view of Lassen '062, Lenaghan '326, and Srinivasan '567?
- D. Is Claim 14 patentable under 35 U.S.C. Section 103(a) over Molnlycke PCT '008 in view of Lassen '062, Houghton '950, and Richardson '466?

VII. GROUPING OF CLAIMS

- A. Regarding Issue A, Claims 1 and 13-15 stand or fall together.

- B. Regarding Issue B, Claims 1, 5, 11, 13, 15, 19, and 25 stand or fall together.
- C. Regarding Issue C, Claims 8-10 and 22-24 stand or fall together.
- D. Regarding Issue D, Claim 14 stands alone.

VIII. ARGUMENT

- A. Claims 1 and 13-15 are Definite Under 35 U.S.C. Section 112, Second Paragraph.

Pending Claims 1 and 15 recite “a retainer flap extending over said baffle and covering greater than about 40 percent of the surface opposed to the body-faceable surface.” Pending Claims 1 and 15 later recite “whereby said retainer flap covers a portion of said baffle.” The Examiner asserts that if the retainer “flap covers 100% of the surface as set forth on lines 9-10 [of Claim 1] than [sic] the flap covers more than just a portion of the baffle as set forth on lines 17-18 [of Claim 1].” (Final Office Action mailed April 22, 2004, page 3, para. 7; emphasis added.) The Examiner applies the same rejection to Claim 15 and notes dependent Claims 5, 8, 11, 19, 22, and 25 “set forth the range being less than 100%.”

The Applicant respectfully disagrees with the Examiner’s interpretation of the claims. The Examiner has incorrectly interpreted the term “portion” (as used in Claims 1, 5, 8, 15, 19, and 22) and the term “part” (as used in Claims 11 and 25) to exclude “total” or “100%” as if the claims recited “only a portion” or “only a part”, respectively. See Mars, Inc. v. H.J. Heinz Co., No. 03-1617 2004 U.S. App. LEXIS 15640, at *4 (Fed. Cir. Jul. 29, 2004) (holding that a claim to a mixture containing named ingredients is open-ended and is not limited to a mixture containing only the named ingredients.)

Claims 1 and 15 use the transitional term “comprising” and are therefore correctly construed as open-ended claims. As such, a retainer flap “extending over said baffle

and covering greater than about 40% of the surface opposed to the body-faceable surface" may indeed cover as much as 100% of the baffle. Even so, such a retainer flap still covers at least "a portion of said baffle" as recited in the claims. Therefore, Claims 1 and 15, as well as the claims dependent therefrom, are definite under 35 U.S.C. Section 112, second paragraph.

B. Claims 1, 5, 11, 13, 15, 19, and 25 are Patentable Under 35 U.S.C. Section 103(a) Over Molnlycke PCT '008 in View of Lassen '062.

Independent Claims 1 and 15 were rejected under 35 U.S.C. 103(a) as being unpatentable over Molnlycke PCT '008 in view of Lassen '062. The Examiner asserts that Molnlycke PCT '008 "includes all of the claimed structure except for the absorbent article being configured for disposition primarily with a vestibule of a female wearer." (Final Office Action mailed April 22, 2004, page 5, para. 11.) Lassen '062 discloses an anatomically conformable labial sanitary pad.

The Applicant respectfully submits that the cited references cannot be combined as suggested by the Examiner to render the claimed invention obvious.

Figures 1 and 2 of Molnlycke PCT '008 illustrate an embodiment having an elastic sheet 4 on the body faceable surface of an absorbent article. Thus, Figures 1 and 2 of Molnlycke PCT '008 clearly do not teach the limitation "a retainer flap extending over said baffle and covering greater than about 40 percent of the surface opposed to the body-faceable surface" as recited in Claims 1 and 15.

Furthermore, Molnlycke PCT '008 teaches that the embodiment illustrated in Figures 1 and 2 includes "a narrow sheet 4" (page 2, line 13), and Figures 1 and 2 illustrate a sheet 4 that covers less than approximately 20 percent of the baffle. For this embodiment, Molnlycke PCT '008 explicitly teaches away from a flap covering

greater than about 40 percent of the surface opposed to the body-faceable surface, as follows:

In order to convert such an article into package form, it is necessary first to bring the sheet 4 to the opposite side of the absorbent body prior to folding the article and then to tuck the opposite end of the article into the space defined between the sheet and envelope. (Molnlycke PCT '008, p. 3, line 36 through p. 4, line 3).

Thus, the sheet 4 illustrated in Figures 1 and 2 and described in Molnlycke PCT '008 necessarily covers a limited amount of the baffle to prevent covering the absorbent body 1 and to facilitate the principle operation of "tucking" the opposite end into the inverted sheet. Modifying Molnlycke PCT '008 to cover greater than about 40 percent of the outer layer 3, as the Examiner suggests, would interfere with the absorbent body 1, preclude simply "tucking" the opposite end of the absorbent article into the inverted sheet, and would substantially change the principle of operation taught by Figures 1 and 2 of Molnlycke PCT '008.¹ Therefore, the Applicant respectfully asserts that Figures 1 and 2 of Molnlycke PCT '008 cannot form the basis of the obviousness rejection.

Figures 3-5 of Molnlycke PCT '008 illustrate an incontinence protector for men having a sheet 4 on the outer surface thereof. As described on page 4, line 25 through page 5, line 3 of Molnlycke PCT '008, this embodiment "comprises a bag-like container" with "an aperture 5 through which the wearer's penis and scrotum can be inserted into the protector." As such, combining the embodiment illustrated in Figures 3-5 and described in Molnlycke PCT '008 with the teachings of Lassen '062 to create an

¹ See In re Ratti, 270 F.2d 810 (C.C.P.A. 1959) (rejecting an obviousness rejection based on a combination of references that would require a substantial reconstruction and redesign of the elements shown in the primary reference as well as a change in the basic principle of operation of the primary reference).

“absorbent article being configured for disposition primarily within a vestibule of a female wearer” as recited in Claims 1 and 15 completely changes the principle of operation and renders the embodiment illustrated in Figures 3-5 unsatisfactory for its intended purpose.² Therefore, the Applicant respectfully asserts that Figures 3-5 of Molnlycke PCT '008 cannot form the basis of the obviousness rejection.

Additionally, it is respectfully submitted that merely combining elements found in various prior art patents to produce the Applicant's claimed invention is not a proper basis for a 35 U.S.C. § 103(a) rejection.³ “Virtually all inventions are necessarily combinations of old elements. The notion, therefore, that combination claims can be declared invalid merely upon finding similar elements in separate prior patents would necessarily destroy virtually all patents and cannot be the law under the statute, ‘103.’⁴ Thus, the task of the Patent Office is essentially a burden of proof not just to show prior patents with selected elements similar to respective parts of a claimed combination, but to show teachings to support obviously combining the elements in the manner claimed. It is respectfully submitted that the Office Action fails to show where Molnlycke PCT '008 and Lassen '062 provide the motivation for obviously combining their respective technologies in the manner claimed by the Applicant in the claimed invention.

² See In re Gordon, 733 F.2d 900 (Fed. Cir. 1984) (reversing a finding of obviousness because the proposed modification would render the primary reference unsatisfactory for its intended purpose).

³ Graham v. John Deere Co., 383 U.S. 1 (1966) (“Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so.”)

⁴ Panduit Corp. v. Dennison Manufacturing Co., 1 U.S.P.Q 2d 1593, 1603 (Fed. Cir. 1987) (footnotes omitted).

Therefore, the Applicant respectfully submits that independent Claims 1 and 15 are patentable over the cited references. If an independent claim is non-obvious under 35 U.S.C. §103(a), then any claim depending therefrom is non-obvious. In re fine, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596 (Fed. Cir. 1998). All of the dependent claims (5, 11, 13, 19, and 25) depend directly or indirectly from one of the two previously mentioned independent claims that are non-obvious under §103(a). The Applicant therefore respectfully submits that Claims 1, 5, 11, 13, 15, 19, and 25 are patentable under 35 U.S.C. §103(a) in view of the prior art.

C. Claims 8-10 and 22-24 are Patentable Under 35 U.S.C. Section 103(a) Over Molnlycke PCT '008 in View of Lassen '062, Lenaghan '326, and Srinivasan '567.

Claims 8-10 and 22-24 were rejected as being unpatentable under 35 U.S.C. Section 103(a) over Molnlycke PCT '008 in view of Lassen '062, Lenaghan '326, and Srinivasan '567. Claims 8-10 depend from Claim 1, and Claims 22-24 depend from Claim 15. As previously described in the Argument for Issue B, Molnlycke PCT '008 and Lassen '062 cannot be combined as suggested by the Examiner to render independent claims 1 or 15 obvious, and neither Lenaghan '326 nor Srinivasan '567 corrects this deficiency. For at least this reason, Claims 8-10 and 22-24 are patentable under 35 U.S.C. Section 103(a) in view of the prior art.

D. Claim 14 is Patentable Under 35 U.S.C. Section 103(a) Over Molnlycke PCT '008 in View of Lassen '062, Houghton '950, and Richardson '466.

Claim 14 was rejected as being unpatentable under 35 U.S.C. Section 103(a) over Molnlycke PCT '008 in view of Lassen '062, Houghton '950, and Richardson '466. Claim 14 depends from Claim 1. As previously described in the Argument for Issue B,


Molnlycke PCT '008 and Lassen '062 cannot be combined as suggested by the Examiner to render independent claim 1 obvious, and neither Houghton '950 nor Richardson '466 corrects this deficiency. For at least this reason, Claim 14 is patentable under 35 U.S.C. Section 103(a) in view of the prior art.

IX. Conclusion

For at least the reasons discussed above, the Applicant respectfully submits that the final rejection of Claims 1, 5, 8-11, 13-15, 19, and 22-25 should be reversed and that the application be remanded to the Examiner for allowance.

Respectfully submitted,

September 20, 2004



Steven R. LeBlanc
Reg. No. 47,740
DORITY & MANNING, P.A.
P.O. Box 1449
Greenville, SC 29602
(864) 271-1592
(864) 233-7342



APPENDIX

Claim 1 (currently amended): An absorbent article, comprising:

- (a) a liquid permeable cover;
- (b) a liquid impermeable baffle;
- (c) an absorbent disposed between the cover and said baffle, said absorbent article being configured for disposition primarily within a vestibule of a female wearer, said absorbent article having a central longitudinal axis, an outer edge defining a first outer perimeter of said absorbent, a body-faceable surface, and a surface opposed to the body-faceable surface; and
- (d) a retainer flap extending over said baffle and covering greater than about 40 percent of the surface opposed to the body-faceable surface such that said baffle is between said retainer flap and said absorbent, said retainer flap having a second outer perimeter, the second outer perimeter having first and second portions, the first portion being disposed proximate the first outer perimeter of said absorbent article, and being generally attached in said absorbent article at or adjacent the first outer perimeter, the second portion of the second outer perimeter of said retainer flap extending across an outer surface of said baffle whereby said retainer flap covers a portion of said baffle, the second portion of the second outer perimeter of said retainer flap being displaceable from said baffle thereby to define a first cavity between said retainer flap and said baffle.

Claim 2 (cancelled).

Claim 3 (cancelled).

Claim 4 (withdrawn): The absorbent article as in Claim 1, the second portion of the second outer perimeter of said retainer flap extending in a direction not parallel to the central longitudinal axis.

Claim 5 (currently amended): The absorbent article as in Claim 1 wherein said retainer flap forms a portion of the surface opposed to the body-faceable surface.

Claim 6 (canceled).

Claim 7 (canceled).

Claim 8 (currently amended): The absorbent article as in Claim 1 wherein, for disposal, said absorbent article is adapted to be folded upon itself such that first and second opposing portions of the outer edge at the first outer perimeter are brought into face-to-face relationship with each other, and wherein said retainer flap is adapted to be folded over the opposing portions of the outer edge to thereby open the first cavity and define a second cavity receiving both of the first and second opposing portions of the outer edge thereinto with said absorbent article so folded, whereby said retainer flap retains the first and second opposing portions of the outer edge in the second cavity, and wherein a mid-section of said absorbent article extends outwardly from the second cavity and defines a portion of an outer surface of said absorbent article as so folded.

Claim 9 (previously presented): The absorbent article as in Claim 8 wherein said retainer flap is resiliently extensible and wherein resilient forces actively retract the retainer flap about the first and second opposing portions of the outer edge at the second cavity after the second cavity is fully formed with the first and second opposing portions of the outer edge in the second cavity.

Claim 10 (previously presented): The absorbent article as in Claim 8 wherein a

first cavity portion of said absorbent article underlying the said retainer flap at the first cavity is configured such that the absorbent is retained between said baffle and said cover after said second cavity is formed.

Claim 11 (currently amended): The absorbent article as in Claim 1 wherein the surface opposed to the body-faceable surface is defined in part by said retainer flap and in part by said baffle.

Claim 12 (withdrawn): The absorbent article as in Claim 1 wherein the absorbent comprises superabsorbent polymer.

Claim 13 (previously presented): The absorbent article as in Claim 1 wherein the first portion of the second outer perimeter extends along the first outer perimeter of said absorbent article between first and second ends of the second portion of the second outer perimeter of said retainer flap, whereby said baffle and the first portion of the second outer perimeter of said retainer flap define a closed end of the first cavity.

Claim 14 (previously presented): The absorbent article as in Claim 1, including printed text on a surface which assists in defining, and which is disposed within, the first cavity.

Claim 15 (currently amended): An absorbent article, comprising:

(a) a liquid impermeable baffle;

(b) an absorbent, said absorbent article being configured for disposition primarily within a vestibule of a female wearer, said absorbent article having a central longitudinal axis, an outer edge defining a first outer perimeter of said absorbent article, a body-faceable surface, and a surface opposed to the body-faceable surface; and

(c) a retainer flap extending over said baffle and covering greater than about 40 percent of the surface opposed to the body-faceable surface such that said baffle is between said retainer flap and said absorbent, said retainer flap having a second outer perimeter, the second outer perimeter having first and second portions, the first portion being disposed proximate the first outer perimeter of said absorbent article, and being generally attached in said absorbent article at or adjacent the first outer perimeter, the second portion of the outer perimeter of said retainer flap extending across an outer surface of said baffle whereby said retainer flap covers a portion of said baffle, the second portion of the second outer perimeter of said retainer flap being displaceable from said baffle thereby to define a first cavity between said retainer flap and said baffle.

Claim 16 (cancelled).

Claim 17 (cancelled).

Claim 18 (withdrawn): The absorbent article as in Claim 15, the second portion of the second outer perimeter of said retainer flap extending in a direction not parallel to the central longitudinal axis.

Claim 19 (currently amended): The absorbent article as in Claim 15 wherein said retainer flap forms a portion of the surface opposed to the body-faceable surface.

Claim 20 (cancelled).

Claim 21 (cancelled).

Claim 22 (currently amended): The absorbent article as in Claim 15 wherein, for disposal, said absorbent article is adapted to be folded upon itself such that first and

second opposing portions of the outer edge at the first outer perimeter are brought into face-to-face relationship with each other, and wherein said retainer flap is adapted to be folded over the opposing portions of the outer edge to thereby open the first cavity and define a second cavity receiving both of the first and second opposing portions of the outer edge thereinto with said absorbent article so folded, whereby said retainer flap retains the first and second opposing portions of the outer edge in the second cavity, and wherein a mid-section of said absorbent article extends outwardly from the second cavity and defines a portion of an outer surface of said absorbent article as so folded.

Claim 23 (previously presented): The absorbent article as in Claim 22 wherein said retainer flap is resiliently extensible and wherein resilient forces actively retract the retainer flap about the first and second opposing portions of the outer edge at the second cavity after the second cavity is fully formed with the first and second opposing portions of the outer edge in the second cavity.

Claim 24 (previously presented): The absorbent article as in Claim 22 wherein a first cavity portion of said absorbent article underlying said retainer flap at the first cavity is configured such that said baffle forms a corresponding portion of the surface opposing the body-faceable surface after said second cavity is formed.

Claim 25 (currently amended): The absorbent article as in Claim 15 wherein the surface opposed to the body-facing surface is defined in part by said retainer flap and in part by said baffle.

Claim 26 (withdrawn): The absorbent article as in Claim 15, wherein the absorbent comprises superabsorbent polymer.

Claims 27-40 (canceled).